

cc: order, docket, remand letter to Los Angeles Superior Court
Northeast District, Pasadena, No. 13P02233

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

RAC DEVELOPMENT, INC.,

Plaintiff,

v.

JACQUELINE BADIO; DOES 1–10,

Defendants.

Case No. 2:13-cv-06500-ODW(AJWx)

**ORDER DISCHARGING ORDER TO
SHOW CAUSE AND REMANDING
CASE**

On September 5, 2013, Gregorio Francis¹ removed this action to this Court—just 10 days after the Court remanded this case for the second time. (ECF No. 1.) This is now the *third* time that either Francis or Defendant Jacqueline Badio has removed this case to this Court. In the last remand order, the Court warned the parties that removing this case again would result in \$1,000.00 in sanctions for violating Federal Rule of Civil Procedure 11(b)(2). *RAC Dev., Inc. v. Badio* (“*Badio II*”), No. 2:13-cv-06133-ODW(AJWx), ECF No. 6, (C.D. Cal. filed Aug. 21, 2013).

On September 16, 2013, the Court ordered Francis to show cause why he should not be sanctioned \$1,000 for violating the Court’s Order. On October 7, 2013, he filed his response, contending that he was not aware of the Court’s warning in the

¹ Francis is not a named defendant in the Los Angeles Superior Court Action. Rather, he styles himself an intervenor in that case under a “Prejudgment Claim of Right to Possession.” (Not. of Removal ¶ 3.) Regardless of the merit of Francis’s allegation, the Court will refer to him as a defendant for clarity.

1 Order remanding *Badio II*. After considering Francis’s arguments, the Court declines
 2 to sanction Francis and **REMANDS** this action to Los Angeles County Superior
 3 Court.

4 Francis first removed this ordinary, state-law, unlawful-detainer action on
 5 August 8, 2013. *RAC Dev., Inc. v. Badio* (“*Badio I*”), No. 2:13-cv-05739-
 6 ODW(AJWx), ECF No. 1, (C.D. Cal. filed Aug. 8, 2013). Francis alleged that this
 7 court had federal-question jurisdiction over the matter under the Protecting Tenants at
 8 Foreclosure Act of 2009. Pub. L. 111-22, §§ 701–04, 123 Stat. 1632 (2009). The
 9 Court disagreed, finding that an unlawful-detainer action is purely a creature of state
 10 law and does not give rise to a federal question. *Badio I*, ECF No. 4; *see also Galileo*
 11 *Fin. v. Miin Sun Park*, No. 09-1660, 2009 WL 3157411, at *1 (C.D. Cal. Sept. 24,
 12 2009). The Court also determined that Defendants could not establish diversity
 13 jurisdiction, as the amount in controversy did not exceed \$75,000.00. *Badio I*, ECF
 14 No 4. On August 13, 2013, the Court therefore remanded the case to Los Angeles
 15 County Superior Court. *Id.*

16 Eight days later, Badio removed this case again. *Badio II*, ECF No. 1. Badio
 17 contended that removal was proper under 28 U.S.C. § 1443, which provides for
 18 removal of certain civil-rights actions. *Patel v. Del Taco, Inc.*, 446 F.3d 996, 998–99
 19 (9th Cir. 2006) (removing defendants must demonstrate that rights “are given to them
 20 by explicit statutory enactment protecting equal racial civil rights,” and “that the state
 21 courts will not enforce that right, and that allegation must be supported by reference to
 22 a state statute or a constitutional provision that purports to command the state courts
 23 to ignore the federal rights” (internal quotation marks omitted)).

24 Once again, the Court disagreed. The Court stated, “To be clear, this unlawful-
 25 detainer action does not now—nor will it ever—belong in federal court.” *Badio II*,
 26 ECF No. 6. The Court found once again that any purported federal defense failed to
 27 support a finding of federal-question jurisdiction. *Id.*; *Vaden v. Discover Bank*, 556
 28 U.S. 49, 60 (2009); *Hunter v. Philip Morris USA*, 582 F.3d 1039, 1042–43 (9th Cir.

1 2009). Second, the Court reiterated that the amount in controversy was still less than
2 \$10,000.00—a far cry from the \$75,000.00 diversity-jurisdiction threshold.

3 The Court also warned Defendants “that filing a third notice of removal on the
4 same grounds would be a violation of Federal Rule of Civil Procedure 11(b)(2) and
5 would subject [them] to \$1,000 in sanctions or other sanctions in this Court’s
6 discretion.” *Badio II*, ECF No. 6, at 2–3.

7 Sure enough, Francis removed this case again some ten days later. (ECF
8 No. 1.) Francis repeats his assertion that the Protecting Tenants at Foreclosure Act of
9 2009 vests this Court with federal-question jurisdiction. (Not. of Removal ¶ 5–6, 8,
10 12–13.) But the law could not be clearer: “since 1887 it has been settled law that a
11 case may not be removed to federal court on the basis of a federal defense, . . . even if
12 the defense is anticipated in the plaintiff’s complaint.” *Franchise Tax Bd. of State of*
13 *Cal. v. Constr. Laborers Vacation Trust for S. Cal.*, 463 U.S. 1, 14 (1983). Regardless
14 of the merits of Defendants’ federal defenses, those defenses do not, have not, and
15 will not transmute this run-of-the-mill, state-law, unlawful-detainer action into a
16 federal question.

17 Neither does the amount in controversy exceed \$75,000.00. Contrary to
18 Francis’s allegation, the amount in controversy is not the value of title. (Not. of
19 Removal ¶ 23.) In an unlawful-detainer action, the amount in controversy is the
20 reasonable rental value of the property for the time that the defendant wrongfully
21 holds over in possession. Cal. Civ. Proc. Code § 1174(b); *MCA, Inc. v. Universal*
22 *Diversified Enters. Corp.*, 27 Cal. App. 3d 170, 179 (Ct. App. 1972); (*see also* Not. of
23 Removal Ex. A, at 3 (praying for not less than \$50 per day in damages for unlawful
24 possession)).

25 It therefore remains clear that Defendants have not established that this Court
26 has either federal-question or diversity jurisdiction.

27 In his response to the Court’s Order to Show Cause, Francis argues that he was
28 not aware that the Court warned Badio that removing this case again would result in

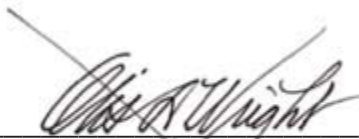
1 \$1,000 in sanctions. Francis admits he is not a party to the state-court unlawful-
2 detainer action. It is still puzzling why he commandeered this case and removed it to
3 this Court. The Court also doubts that Francis was unaware of the Court's previous
4 remand Order, as Francis was the one who started removing this case in the first place.
5 He obviously knew enough about the case to try to remove it a second time himself,
6 which was the *third* time either he or Badio removed this action.

7 After carefully considering the issue, the Court declines to sanction Francis at
8 this time. But the Court makes clear to both Francis and Badio that if they remove
9 this case again, they will be subject to an automatic sanction of \$2,500 and such other
10 sanctions as the Court may determine at that point. The Court accordingly
11 **DISCHARGES** the Order to Show Cause. (ECF No. 5.)

12 The Court finds that it lacks jurisdiction over this case and consequently
13 **REMANDS** this action to Los Angeles County Superior Court, case number
14 13P02233. The Clerk of Court shall close this case.

15 **IT IS SO ORDERED.**

16
17 October 9, 2013

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20 **OTIS D. WRIGHT, II**
21 **UNITED STATES DISTRICT JUDGE**
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